IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 350 OF 1998

The Andhra Bank Ltd. & Anr. ..Applicants.

V/s.

M/s.Swagat a Partnership firm. ..Respondents.

WITH

CIVIL REVISION APPLICATION NO.351 OF 1998

The Andhra Bank & Anr. ..Applicants.

V/s.

M/s.Ramesh Textiles. ..Respondents.

Mr.O.A.Das for applicants.

CORAM: A.M.KHANWILKAR,J
DATE : JULY 17, 2006.

JUDGMENT :

1. Heard counsel for the applicants. None appears for the respondents though served. Both these revision applications can be disposed of by a common Judgment and Order, as involves same issues.

2. The question that arises in the present revision applications is whether the Court below was right in concluding that the Pune Court had jurisdiction to try and decide suits instituted by the respondents. The Respondents in the respective Civil Revision Application filed Suits in the court of C.J.S.D.Pune being S.C.Suit No. 687 of 1996 and 681 of 1996 respectively. In both the suits relief claimed by the respective respondents is for direction against the applicants for return of certain amount as shown in the particulars of claims in paragraph-15 of the plaint alongwith

interest. The case made out by the plaintiffs in the plaint is that they were Merchant Establishment of the applicant bank authorised to give service to the credit card holders of the applicant bank. It is the case of the respondents/plaintiffs that as per the Merchant Agreement executed in favour of the respondents/plaintiffs, they provided service to the credit card holders. Against the said service respective plaintiff has become entitled for certain amounts from the applicant bank. Inspite of the amount had become due and payable, the applicant bank deducted the portion of the amount and forced the plaintiffs to deposit in fixed deposit account. I am not adverting specific figures in relation to the claims of the respective plaintiffs. Suffice it to observe that according to the respondents/plaintiffs, suit as instituted in the Pune Court was on account of cause of action arising within the jurisdiction of that court. The applicant/defendants appeared in the said suits and took out formal application raising issue of jurisdiction of the Pune Court. At the earliest opportunity in terms of section 21(1) of C.P.Code, the trial Court considered the application and has found that Pune Court had jurisdiction to try and decide the suit. This opinion is recorded on the finding that the merchant agreement was entered by the parties at Pune. Non-payment of the amount by the defendant-bank against the amount receivable by the plaintiffs towards accepting credit cards by the credit card holders and requiring the plaintiffs to deposit the amount in fixed deposit. All these cause of action arose at Pune. Besides, the agreement executed between the parties was also at Pune. The Court below has also noted that the applicant-bank has its branch office at Pune. On this finding the Court proceeded to negative the objection regarding jurisdiction of the Pune Court.

3. Counsel for the applicant criticized the Judgment of the lower Court by pointing out the averments in the plaint and the merchant agreement executed

between the parties. He also relied on the decision of Supreme Court reported in (1983) 4 SCC, 707(Globe Transport Corporation V.s.Triveni Engineering Works & Anr.) and AIR 1989 S.C.1239 (A.B.C.Laminart Pvt.Ltd and Anr. V.s.A.P.Agencies, Salem). I find substance in the argument of the applicants that the Court below has clearly overlooked the principle that when two courts have jurisdiction, it is open to the parties to agree to subject any dispute to court of particular jurisdiction only. This principle can be deduced from the two decisions, which are pressed into service on behalf of the applicants. The trial Court while considering the merchant agreement has opined that it does not reveal that the same was executed at Hyderabad. The fact remains that the existence of the said document is accepted by both the parties. Clause (12) of the said document provides as follows:

> "JURISDICTION
>
> All disputes relating to the charges/claims arising out of credit card transaction or interpretation of agreement shall be subject to Hyderabad jurisdiction only"

From the language of this clause, there is no manner of doubt that the parties have agreed that all the disputes in relation to the credit card transaction or interpretation in the agreement will be subject to Hyderabad courts "only". The question therefore, that needs to be considered is whether any part of cause of action has arisen within the jurisdiction of Hyderabad court. This question can be answered on the basis of averments made in paragraphs-11 and 12 of the plaint. In paragraph-11 of the plaint, it is stated by the respective plaintiffs that in the specified period the plaintiffs gave to the defendant No.2 charge-slips for sale of products on the credit card of Andhra Bank. It is then stated that branch of defendant No.2 without plaintiffs' consent and without any reference whatsoever to the plaintiffs, set apart the portion of the said amount and invested it in fixed deposit account. It is then stated in

paragraph-12 of the plaint that the plaintiff complained about this conduct of the branch officials. With a view to settle the said issue, the plaintiffs were called to Hyderabad in the head office. After negotiations the plaintiffs were coerced into accepting the liability of specified amount on the ground that the amount under the charge-slip was not received from the card holder. The plaintiffs in the respective suits paid these amounts subject to the understanding that as soon as the Bank receives the collection from the Card Holders, the same would be paid to the plaintiffs. It is stated that subsequently, the Bank received the collection from the customers, but the amount has remained unpaid. Suffice it to observe that from the averments in paragraph-12 of the plaint, it is amply clear that part of the cause of action has arisen in Hyderabad. Indeed, the contents of the Merchant Agreement by itself does not indicate that the same was executed at Hyderabad. However, as part of cause of action has arisen in Hyderabad by virtue of clause (12) of the Merchant Agreement, suits for the reliefs claimed by the respective plaintiffs will have to be subject to Hyderabad jurisdiction only. Thus understood, the opinion expressed by the Lower Court on the issue of territorial jurisdiction cannot be sustained. Thus, Revision Applications would succeed. The Pune Court shall provide sufficient time to the respondents for return of plaint to be presented before the appropriate forum.

4. Both the Civil Revision Applications disposed of on the above terms.